

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

REPLY COMMENTS OF CIT GROUP INC.

For almost a quarter century, CIT Group Inc. (NYSE: CIT), which currently has more than \$33 Billion in financing and leasing assets, has been a leading middle-market lender to both the broadcast and telecommunications sectors of the communications industry.¹ The present portfolio of CIT's Communications, Media and Entertainment Group ("CME") includes loans to television stations that are possible candidates for participation in the reverse auction process. It also is likely that CME will be called upon to provide future debt financing, both for relocating television stations and for bidders in the forward auction.

After filing its initial comments in this proceeding, CIT reviewed other filed comments with an eye towards issues with financing implications. The resulting reply comments below are not intended to pick winners or losers in the incentive auction process, but, instead, seek to alert the Commission as to matters likely to affect future communications financing decisions by CME and others in the communications finance industry. CIT's reply comments also are intended to further highlight the importance of

¹ CIT is a bank holding company and its principal bank subsidiary is CIT Bank, a Utah state bank.

setting rules and procedures that assure the continuing integrity of the secured lending marketplace for Commission licensees, while treating all interested parties fairly.

CIT appreciates the continuing opportunity to provide the Commission with guidance regarding financial considerations, almost none of which have been raised by other commentors, but which will be critical elements of both the incentive auction process and the ensuing financial analyses that will affect the financial capabilities of most prospective auction participants.

These limited reply comments are being filed in accordance with the “Notice of Proposed Rulemaking” initiating the captioned proceeding.²

Characterization of Payments

CIT’s initial comments in this proceeding asked the Commission to be extremely careful when characterizing the nature of its anticipated payments to reverse auction bidders and relocating stations. More particularly, CIT cautioned that nothing should be done, by implication or otherwise, to characterize any anticipated Commission payment as anything other than “proceeds” of a license disposition; *i.e.*, “proceeds” lawfully subject to a lender’s valid security interest obtained in reliance on extant Commission policy.³ CIT further urged the Commission to affirmatively recognize that there is no reason to treat its payments to bidders or relocating licensees in a manner other than that manner of treatment normally afforded proceeds from commercial transactions among private parties. CIT, in submitting its comments, recognized that the Commission’s jurisdiction does not extend to the adjudication of a particular lien’s

² *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) (“NPRM”).

³ *In re Walter O Cheskey*, 9 FCC Rcd. 986 (Mob. Servs. Div. 1994).

validity or priority, but posited that the Commission's characterization of its payments could have major implications for proceedings in other, appropriate forums.

CIT now calls the Commission's attention to the only other comments filed in this proceeding by a financial services industry participant.⁴ Those comments include the following statement:

While the FCC does not set tax policy, the ambiguity over whether the tendering of spectrum into the reverse auction and redeploying proceeds into a channel share agreement is a taxable event will be a deterrent to participants. A non-binding observation from the FCC that a transaction as just described should be treated as a "like kind exchange" would motivate licensees to participate.⁵

CIT recognizes that the *Downey* statement was made out of concern over potential tax implications, rather than in the context of security interests and other liens. However, the Commission should recognize that the concern expressed by *Downey*, a concern as to implications for financial issues outside the Commission's direct jurisdiction, essentially repeats CIT's call for the Commission to characterize certain of its anticipated payments in a manner that will provide a clear basis for non-Commission adjudications as to the treatment of auction and relocation payments in the hands of payment recipients.

CIT believes it is significant that the only two sets of comments submitted by participants in the communications finance industry both call for the Commission to be careful when characterizing the nature of the payments and exchanges anticipated by this proceeding. From these uncoordinated, but consistent calls for appropriate characterization of its payments, the Commission should recognize that its

⁴ *Comments of James Downey ("Downey")*. Mr. Downey is well known to CIT from his long-time involvement in the broadcast finance industry.

⁵ *Downey*, at p2.

characterizations of payments will be scrutinized by the communications finance industry, and are likely to be critical elements in future financial analyses of both broadcast and telecommunications enterprises. Accordingly, the Commission should make it clear that all payments resulting from the incentive auction, repacking and relocation processes are no different than any proceeds received by licensees in connection with other license dispositions.

Timing

The Commission is preparing to undertake a complex and sensitive process, which must accommodate myriad technical and financial considerations of critical concern to several constituencies. Although the Commission wants to achieve its stated goals as soon as reasonably possible, maximum efficiency, economy and efficacy necessitate the fine tuning and clarification of both the predicted regulatory regimes and the processes by which those regimes will come to fruition, before the auction process begins.

Markets abhor uncertainty, therefore the Commission should eschew the possibility of future on-the-fly modifications in favor of clear and unequivocal objectives and procedures. And, the Commission should develop and finalize its final technical rules and its auction processes with all deliberate speed, but not with an undue speed merely for the sake of speed. As the NAB sagely advises, "it is more important for the Commission to get the auction done *right* than to get it done *right now*."⁶

Repacking Plan

NAB urges the Commission to adopt the "alternative 'Channel 51 down'" band plan, rather than the "split" and "variable" band plan seemingly favored by the NPRM.

⁶ Comments of The National Association of Broadcasters ("NAB"), pp. iii and 10.

CIT submits that the uniform and ubiquitous band plan favored by NAB also would be more attractive to the financial services industry, which will be called upon to provide the capital necessary for the incentive auction and repacking processes to be successful.

At a minimum, a uniform band plan would remove, or at least mitigate, concerns as to whether there can be truly ubiquitous broadband coverage with a minimum of potentially complicating technical issues, including those related to frequency agility and compatibility. Such a uniform band plan also could provide broadcasters, and all other users, with more certain and consistent protections against inter-service interference. All in all, the certainty provided by a uniform band plan would be a positive factor in the future financial decisions that will affect broadcasters, broadband providers, and all the others who will be reliant on the overall band plan resulting from this proceeding.

Valuation and Pricing

An eternal verity, evidenced by various comments, is that sellers want to set prices high, while buyers want to keep prices low. However, true market value can be determined only in an open and informed marketplace.

The Commission should adopt reverse auction pricing methodologies and forward auction bidding procedures that will allow market forces to finally determine the prices accepted and paid. The only restraint the Commission should impose on pricing and bidding levels is the right to ultimately determine whether enough has been bid in the forward auction to cover reverse auction payments and other mandated costs, such as relocation expenses. In any event, the Commission should avoid trying to impose extraneous costs, obligations or gratuitous “bid-ask spreads” on the overall incentive auction process.

With regard to the reverse auction, the Commission should fully disclose, after each round of bidding, the number of channels it seeks to clear and the number of licensees/channels remaining in play, on a market-by-market basis. With regard to the forward auction, the Commission should disclose, after each round of bidding, the number of bids received for each offered channel, and the amount of each such bid.

Finally, when determining whether to accept the final results of the reverse and forward auctions, the Commission should consider only whether the aggregate amount of all final forward bids is sufficient to meet all of the Commission's statutorily mandated obligations, including both its payment obligations to reverse bidders, and its other associated obligations, such as for relocation costs. In this regard, the Commission should not make multiple market-by-market sufficiency determinations, for to do so would disrupt bidding plans based on the ubiquitous availability of channels pursuant to a uniform band plan. Instead, the Commission's determinations as to the equilibrium and sufficiency of reverse and forward auction prices should be based on the aggregate prices for all involved markets.

Conclusion

CIT again urges the Commission to adopt rules and procedures that will facilitate the efficacious financing and implementation of the proposed auction, repacking and relocation processes by assuring the financial services industry that the Commission

will maintain the integrity of the Commission's current policies regarding liens and other private financial arrangements.

Respectfully submitted,

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